



**Texas House of Representatives Elections Committee  
Written Testimony on Interim Charge #3, September 18, 2020**

James Slattery  
Senior Staff Attorney, Voting Rights Program  
Texas Civil Rights Project  
1405 Montopolis, Austin, TX 78741  
[james@texascivilrightsproject.org](mailto:james@texascivilrightsproject.org); (512) 474-5073

To Chair Klick and members of the Texas House Elections Committee:

My name is James Slattery, and I am a Senior Staff Attorney at the Texas Civil Rights Project ("TCRP"). Thank you for the opportunity to provide this testimony on Interim Charge #3.

*The Most Critical Issue Facing Texas Elections Is Voter Suppression, not "Voter Fraud"*

Interim Charge #3 begins by requesting that witnesses "[e]valuate election laws with the purpose of strengthening voter integrity and fair elections." Quite simply, Texas's election systems are now in a serious crisis demanding urgent reform from top to bottom. For many years, the focus of Texas election policy has been combating "voter fraud," imposing a series of increasingly onerous restrictions on the right to vote under the guise of "election integrity." These restrictions have done almost nothing to make Texas's elections more secure, as the evidence for widespread voter fraud in the state (or anywhere in the country) has remained nonexistent throughout.<sup>1</sup>

Instead of making voting more secure, however, these measures have merely made it harder for eligible voters to cast a ballot. Indeed, Texas is now one of the hardest places to vote in the entire country.<sup>2</sup> It is easy to see the toll this war on democracy has taken on Texas voters. In the last two federal elections, Texas's voter registration rate was in the bottom 20% nationwide. Similarly, Texas's voter turnout rate was the fifth worst in the country in both the 2016 and 2018 general elections.<sup>3</sup>

Further, a rigid focus on measures against "voter fraud" to the exclusion of nearly anything else has left Texas's voting infrastructure to rot through both willful and selective neglect. Every election season, Texas makes national headlines for some new catastrophe that has befallen voters, particularly people of color. For instance, during

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<sup>1</sup> *Resources on Voter Fraud Claims*, Brennan Center for Justice, <https://www.brennancenter.org/our-work/research-reports/resources-voter-fraud-claims> (last visited Sept. 18, 2020) (collecting dozens of scientific studies, judicial decisions, and governmental investigations that have found voter fraud to be either "extremely rare" or "virtually nonexistent"); Benjamin L. Ginsberg, *Republicans have insufficient evidence to call elections 'rigged' and 'fraudulent'*, Wash. Post (Sept. 8, 2020), <https://www.washingtonpost.com/opinions/2020/09/08/republicans-have-insufficient-evidence-call-elections-rigged-fraudulent/>.

<sup>2</sup> See Bill Theobald, *The 6 toughest states for voting during the pandemic*, The Fulcrum (Apr. 29, 2020) (listing Texas as among the "six states [that] now stand out as having the most restrictive voting rules in the country"), <https://thefulcrum.us/voting/voting-during-coronavirus/6-texas>; *Why Texas is the Most Difficult State in the Country to Register Voters*, Texas Standard (Oct. 11, 2016) (explaining why Texas "really is the most difficult state in the country to register voters" and noting that "Texas has more unregistered voters than the total population of 20 states"), <https://www.texasstandard.org/stories/why-texas-is-the-most-difficult-state-in-the-country-to-register-voters/>; Amanda Shendruk, *The difficulty of voting in every US state, ranked*, Quartz (Oct. 27, 2018) (showing Texas dropped from being the 14th easiest state to vote in 1996 to being the fourth hardest by 2016) <https://qz.com/1439299/here-are-the-states-where-its-hardest-to-vote/>.

<sup>3</sup> See Voting and Registration in the Election of November 2016, Table 4a, U.S. Census Bureau, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html> (last visited Sept. 18, 2020) (Columns G and L); Voting and Registration in the Election of November 2018, Table 4a, U.S. Census Bureau, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html> (last visited Sept. 18, 2020) (Columns G and L).

the March 2020 Primary Election, a “perfect storm” of closed polling places, an insufficient number of voting machines that are also well past the end of their lifespan, and poll worker shortages created lines of up to six hours at polling places.<sup>4</sup> In 2016 and 2018, voting machines using an outdated interface appeared to “flip” votes from one candidate to another in the leading statewide race of those years.<sup>5</sup> TCRP has documented this escalating series of voting disasters in a number of reports, most recently estimating that “at least 277,628 voters were harmed by Texas’ election administration failures in the 2018 midterm election.”<sup>6</sup>

By 2020, the combination of a singular focus on chasing down baseless conspiracy theories of “voter fraud” and passivity as Texas’s election systems deteriorated had already created a growing crisis of voter suppression in our state. But the onset of the coronavirus pandemic has turned these issues from “merely” a crisis for democracy into literally a matter of life and death for millions of voters. Without online voter registration, Texas’s paper-based voter registration system largely relies on close (and now dangerous) person-to-person contact, and Texas’s restrictive vote by mail laws as interpreted by the Texas Supreme Court mandate that the vast majority of Texans must vote in person rather than from the safety of their homes. Our election laws have forced voters to make a terrifying choice this year--between their health and their right to vote--that no Texan should ever have to make again.

This testimony will focus on two of the most critical areas for reform to ensure “voter integrity and fair elections”--namely a thorough modernization of the state’s woefully antiquated voter registration and vote by mail systems--and an evaluation of the current state of curbside voting. But more broadly, it must be the priority of this Committee during the 2021 Legislative Session to review the entire Election Code for any and all unnecessary obstacles to registering and voting, eliminate them, and further provide substantial investment to all of the components of our electoral infrastructure that need it. Voting is a fundamental right, not a privilege, that must be easily accessible to all who are eligible. The core mission of this Committee in the upcoming Session must be to protect the right to vote of all of our citizens, and to confront this crisis of voter suppression engulfing our state.

#### *Texas Must Modernize Its Voter Registration Systems With 21st Century Technology*

Texas’s voter registration system cries out for root and branch reform. Texas imposes a series of barriers to registration that make it “the most difficult state in the country to register voters.”<sup>7</sup> Texas requires voters to register via a paper form that must be submitted in hard copy, a paper-based system that forty-one other states have abandoned in favor of online voter registration.<sup>8</sup> It is all too easy for something to go wrong at any stage of Texas’s paper-based voter registration system, requiring the voter to then start all over: the voter didn’t receive the form in the mail after requesting it from election officials; the voter overlooks a required element on the form, such as signing the application; the application gets lost in the mail or misplaced by election officials; on receiving the application, election officials misread the voter’s handwriting (if they can decipher it at all) and incorrectly enter the voter’s information.

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<sup>4</sup> Alexa Ura, *Texas lawmakers to hold hearing into excessive Super Tuesday voting lines*, Texas Tribune (Mar. 5, 2020), <https://www.texastribune.org/2020/03/05/texas-lawmakers-excessive-voting-lines-primary/>; Todd J. Gillman, James Barragán and María Méndez, ‘No one should wait six hours to vote,’ but in Texas, thousands did on Super Tuesday, Dallas Morning News (Mar. 4, 2020), <https://www.dallasnews.com/news/politics/2020/03/05/no-one-should-wait-six-hours-to-vote-but-in-texas-thousands-did-on-super-tuesday/>.

<sup>5</sup> Adi Robertson, *Texas voting machines are switching votes — but it’s bad design, not hacking*, The Verge (Oct. 30, 2018) <https://www.theverge.com/2018/10/30/18037872/texas-voting-machine-hart-eslate-voting-ballot-switch-problems>; Bobby Blanchard, *Trump says he’s getting calls about “vote flipping” at the polls in Texas*, Texas Tribune (Oct. 27, 2016), <https://www.texastribune.org/2016/10/27/trump-says-hes-getting-calls-about-vote-flipping-p/>.

<sup>6</sup> See, e.g., Beth Stevens et al., *Texas Election Protection 2016: An Overview of the Challenges Faced by Texas Voters in the Presidential Election* (2017), <https://texascivilrightsproject.org/wp-content/uploads/2018/09/EP-Report.pdf>; Beth Stevens & Emily Eby, *Texas Election Protection 2018: How Election Administration Issues Impacted Hundreds of Thousands of Voters* (2019), <https://texascivilrightsproject.org/wp-content/uploads/2019/03/2019-Election-Protection-Report.pdf>.

<sup>7</sup> See *Why Texas is the Most Difficult State in the Country to Register Voters*, supra n. 2, <https://www.texasstandard.org/stories/why-texas-is-the-most-difficult-state-in-the-country-to-register-voters/>.

<sup>8</sup> *Online Voter Registration*, National Conference of State Legislatures (last visited Sept. 18, 2020), <https://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>.

And there is a strict deadline for voters to get through this obstacle course: in Texas, you must have turned in your VR application no later than 30 days before the election.<sup>9</sup>

Other aspects of Texas's voter registration system also regularly disenfranchise voters. As found in multiple federal cases, Texas has long been violating the National Voter Registration Act by failing to offer customers the opportunity to register to vote when they update or renew their driver's licenses online.<sup>10</sup> TCRP has documented in a series of reports that the vast majority of eligible high school students are not being offered the opportunity to register to vote as required under state law, denying many thousands of young Texans their first chance to vote.<sup>11</sup>

As noted above, these and other barriers to voter registration have had a real and pernicious effect, particularly on people of color, driving voter registration rates in Texas to the bottom compared with nearly all other states. Further, according to a survey TCRP conducted of the five counties with the highest overall turnout in the 2018 election, two-thirds of rejected provisional ballots in those counties arose from voters who incorrectly believed themselves to be registered to vote, suggesting that voter registration issues are one of the most important drivers of voter disenfranchisement in the state.<sup>12</sup>

It doesn't have to be this way. There are a number of other voter registration models that are tried and tested, have been implemented successfully in a number of other states, and increase the accuracy of the rolls while making it easier for people to register:

- **Online voter registration (“OVR”)**, which would allow a person to register on an Internet website. OVR would confirm the voter's eligibility by comparing it against information the voter provided when applying for a driver's license or state identification card. OVR's security is enhanced by requiring a voter to provide their driver's license number or the last four digits of their Social Security number, adding “captcha” boxes that thwart bots and hackers, encrypting data and maintaining data logs that can be used to monitor for suspicious activity, and “multi-screen systems” that require voters to go to a different page for each question. 40 other states have successfully implemented OVR, enjoying enormous cost savings of well over 90% while allowing voters to easily update their registration information, thereby bolstering the accuracy of the voter registration rolls at the same time.<sup>13</sup>
- **Same day voter registration (“Same Day VR”)**, which allows eligible voters to register and cast a ballot on the same day. It provides a fail safe option for voters who missed the deadline to register or whose application went awry during the registration process through no fault of their own. Same Day VR's security is enhanced by requiring proof of residency and identity (such as a current paycheck or utility bill), providing for use of e-pollbooks that ensure that no voter can register and vote at different locations on the same day,

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<sup>9</sup> See Tex. Elec. Code § 13.143.

<sup>10</sup> See Second Order Granting Motion for Preliminary Injunction, *Stringer v. Hughs*, Case No. SA-20-CV-46-OG, Aug. 28, 2020, [https://static.texastribune.org/media/files/6b8af86bf5b3c171fc593cea816c5152/GarciaRulingStringerII.pdf?\\_ga=2.36964768.1663460249.1600111734-779808375.1548729004](https://static.texastribune.org/media/files/6b8af86bf5b3c171fc593cea816c5152/GarciaRulingStringerII.pdf?_ga=2.36964768.1663460249.1600111734-779808375.1548729004); *Stringer v. Pablos*, 2020 WL 532937 (W.D. Tex. Jan. 30, 2020); *Stringer v. Pablos*, 320 F. Supp. 3d 862 (W.D. Tex. 2018), *rev'd and remanded sub nom. Stringer v. Whitley*, 942 F.3d 715 (5th Cir. 2019).

<sup>11</sup> Stephanie Gómez, *High School Voter Registration 2020: Communities Across Texas Prioritize Youth Civic Engagement*, Texas Civil Rights Project (2020), <https://txcivilrights.org/wp-content/uploads/2020/08/HSVR-Report-2020.pdf>; James Slattery, *High School Voter Registration in Texas: Grassroots Activism Pushes Progress, Despite Continued Failings of State Officials*, Texas Civil Rights Project (2019), <https://txcivilrights.org/wp-content/uploads/2020/05/2019-HSVR-Compliance-Report.pdf>; James Slattery, *High School Student Voter Registration: How Texas still fails to engage the next generation of voters*, Texas Civil Rights Project (2018), <https://texascivilrightsproject.org/wp-content/uploads/2018/07/2018-HSVR-Compliance-Report.pdf>; Beth Stevens et al., *The High School Vote: How Texas fails to engage the next generation of voters*, Texas Civil Rights Project (2017), <https://texascivilrightsproject.org/wp-content/uploads/2018/02/HSVR-Report.pdf>.

<sup>12</sup> See Stevens & Eby, *supra* n. 6, at 10, <https://texascivilrightsproject.org/wp-content/uploads/2019/03/2019-Election-Protection-Report.pdf>.

<sup>13</sup> See *Online Voter Registration*, *supra* n. 8, <https://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx> (Oklahoma will be the 41 state once it's fully implemented).

and requiring that voters swear under oath that they are eligible to vote and have not already voted in the election. Like OVR, it makes the registration rolls more accurate by allowing voters to correct errors or update their information after a very recent move. The costs of adoption are not onerous--especially when compared to the benefits outlined above--and the 21 states and the District of Columbia that have implemented some form of Same Day VR have seen no increase in fraud as a result.<sup>14</sup>

- **Automatic voter registration (“AVR”)**, which automatically registers eligible citizens when they interact with a government agency (such as the department of motor vehicles), allowing the voter to opt out before finalizing. As its name suggests, AVR keeps the rolls up to date automatically with information collected during routine transactions between the voter and the government, lessening the time between when a voter’s information has changed and the registration rolls have been updated, while also decreasing the chance that human error will corrupt registration records. Voters wouldn’t be disenfranchised merely because they don’t realize they need to re-register when they move, or because they got confused by the byzantine red tape of a paper-based registration system. Its security is enhanced by requiring the last four digits of a Social Security number and by comparing the information the voter provides to other information on file. It has been adopted by at least 19 states and DC.<sup>15</sup>

Two other steps would also make it easier to register, and bolster the accuracy of the rolls. First, the Legislature should mandate that the Department of Public Safety offer customers the opportunity to register to vote when they conduct online driver’s license transactions, such as a renewal or change of address, so that the state can come into compliance with the National Voter Registration Act. Second, the Legislature should require the Secretary of State to proactively send sufficient voter registration forms to each high school in the state--without waiting for a request from schools--so that the promise of the state’s high school voter registration law can be fulfilled.

Texas is an outlier on nearly every aspect of registering to vote, and our state’s voters deserve to have a modern registration system that Americans elsewhere enjoy. The goal should be a voter registration system that is easy, accessible, and accurate for all Texans. By adopting models that have already proven their value and shown themselves to be secure in the rest of the country, Texas can make a quantum leap into 21st Century election administration.

#### *Texas Must Expand Vote By Mail As an Option for Every Texas Voter*

The most basic requirement of a “fair election” is that eligible voters can safely and easily access a ballot. But Texas’s highly restrictive vote by mail laws require the vast majority of Texans to vote in person, and during the coronavirus pandemic this has left millions of Texans with an impossible choice: risk your life by voting in person or possibly giving up your fundamental constitutional right to vote. No voter should ever again have to make that decision, making vote by mail reform an urgent priority for ensuring fair elections after 2020.

At the start of 2020, Texas was one of only 16 states that denied voters the right to cast a mail in ballot unless they had one of a narrow set of government-approved “reasons” specified in the Election Code: being at least 65 years old; being disabled; absence from the county during the entire period of in-person voting; or confinement in jail

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<sup>14</sup> *Same Day Voter Registration*, National Conference of State Legislatures (last visited Sept. 18, 2020), <https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>; *What Is Same Day Registration? Where Is It Available?*, Demos (last visited Sept. 18, 2020), <https://www.demos.org/research/what-same-day-registration-where-it-available>.

<sup>15</sup> *Automatic Voter Registration*, National Conference of State Legislatures (last visited Sept. 18, 2020), <https://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx>; *Automatic Voter Registration, a Summary*, Brennan Center for Justice (last visited Sept. 18, 2020), <https://www.brennancenter.org/our-work/research-reports/automatic-voter-registration-summary>.

without a final felony conviction.<sup>16</sup> When the coronavirus struck Texas, it remained “one of just six states refusing to expand mail-in voting during the coronavirus pandemic.”<sup>17</sup>

Not only did Texas fail to take steps to make vote by mail more accessible during the pandemic, but it also actively worked to obstruct Texans seeking to vote safely by mail. This spring, the Texas Attorney General engaged in a campaign to intimidate voters from exercising their right to vote by mail by threatening criminal prosecutions against groups that would help people vote by mail during the pandemic, and by implication against the voters themselves.<sup>18</sup> He also advocated before the Texas Supreme Court that lack of immunity to the coronavirus was merely an “emotional condition” not qualifying as a disability under the Election Code. Most recently, Ken Paxton filed an outlandish lawsuit to block Harris County from sending vote by mail applications to every registered voter in the county.<sup>19</sup>

Requiring an “excuse” to vote by mail is a relic from the past. It privileges certain voters with an additional voting option that is not available to all. The “reasons” themselves confuse voters, such as what constitutes a “disability” and the degree to which you must be absent from your county in order to vote. Vote by mail is highly secure, and “[c]laims that there is rampant fraud in mail-in voting are unsustainable,” as former Speaker Joe Straus recently acknowledged.<sup>20</sup> And during outbreaks of disease, like the coronavirus outbreak, it may literally mean the difference between disenfranchisement and exposure to a devastating illness.

But it is not enough for voters to be able to access and cast a vote by mail ballot. The ballot must also be counted fairly and accurately. As a federal court found recently, Texas’s procedure to review signature matching on vote by mail ballots violates the United States Constitution because it does not provide sufficient notice and opportunity.<sup>21</sup> Texas must reform its signature matching process to provide such sufficient notice and opportunity.

#### *Texas Must Preserve and Expand the Option to Vote Curbside*

Finally, the Committee’s third interim charm asks for “a review of the state’s curbside voting protocols and identify processes to improve the efficiency, privacy, and security of curbside voting.” Curbside voting is a very popular option for voters who cannot enter the polling place to cast their ballots. The Legislature spent a great deal of time last Session examining whether curbside voting was a vehicle for widespread fraud, and no such allegations were substantiated. To the extent that the Committee returns to this topic, it should direct its focus on ways to expand it as an option to all Texas voters who need it or who could benefit from it, not on baseless conspiracy theories that it is a venue for “fraud.”

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<sup>16</sup> Mark Dent, *As states expand vote by mail amid COVID, Texas leaders continue their fight against it*, Fort Worth Star-Telegram (June 28, 2020), <https://www.star-telegram.com/news/politics-government/article243781757.html>.

<sup>17</sup> Press Release, *Select Subcommittee Investigation Reveals Serious Problems In States’ Election Preparedness* (last visited Sept. 18, 2020), <https://coronavirus.house.gov/news/press-releases/select-subcommittee-investigation-reveals-serious-problems-states-election>.

<sup>18</sup> See, e.g., Ken Paxton, Att’y Gen. of Tex., Opinion Letter on Ballot by Mail Based on Disability to County Judges and County Election Officials, (May 1, 2020), [https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Mail-in%20Ballot%20Guidance%20Letter\\_05012020.pdf](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Mail-in%20Ballot%20Guidance%20Letter_05012020.pdf); Letter from Ryan M. Vassar, Deputy Att’y Gen. for Legal Counsel, Att’y Gen. of Tex., to Stephanie Klick, Chair, Comm. on Elections, Tex. House of Representatives (Apr. 14, 2020), <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/4.14.20%20Letter%20to%20Rep.%20Klick.pdf>.

<sup>19</sup> Press Release, *AG Paxton Urges Texas Supreme Court to Stop Har-ris Coun-ty Clerk from Send-ing Mil-lions of Unso-licit-ed Mail-In Bal-lot Applications* (last visited Sept. 18, 2020), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-urges-texas-supreme-court-stop-harris-county-clerk-sending-millions-unsolicited-mail>.

<sup>20</sup> Joe Straus, *Texas should stop fighting vote-by-mail and accommodate people who need the option*, Dallas Morning News (Sept. 14, 2020), <https://www.dallasnews.com/opinion/commentary/2020/09/14/joe-straus-texas-should-extend-voting-by-mail-to-all/>.

<sup>21</sup> *Richardson v. Tex. Sec’y of State*, --- F.3d ---, 2020 WL 5367216, at \*1 (W.D. Tex. Sept. 8, 2020).